

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of NIKKI SIXX LAFAVE, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

LINDA PERRY, a/k/a LINDA RECHSTEINER,
and JOEL LAFAVE,

Respondents-Appellants.

UNPUBLISHED
September 1, 2009

No. 290038
Alpena Circuit Court
Family Division
LC No. 08-006340-NA

Before: Saad, C.J., and Whitbeck and Zahra, JJ.

PER CURIAM.

Respondents appeal from the trial court order that terminated their parental rights to the infant child. With regard to respondent Perry, the court based termination on MCL 712A.19b(3)(n) (respondent voluntarily relinquished rights to other children after proceedings were commenced). As to respondent LaFave, the court based termination on MCL 712A.19b(3)(k) (prior abuse of the child or a sibling). We affirm.

Respondent LaFave argues the court did not have jurisdiction over him under MCL 712A.2(b)(2). Specifically, he maintains that jurisdiction was improperly assumed based on his criminality because his conviction was fourteen years old and did not establish present criminality. However, respondent conceded below that the court had jurisdiction. Moreover, his challenge to the initial assumption of jurisdiction is not set forth in the question presented. Accordingly, this issue need not be considered further. See *Caldwell v Chapman*, 240 Mich App 124, 132; 610 NW2d 264 (2000).

Here, a statutory ground for termination was established by clear and convincing evidence. *In re JK*, 468 Mich 202, 209; 661 NW2d 216 (2003). Under MCL 712A.19b(3)(k), termination may be based on a finding that the parent abused the child or a sibling of the child and the abuse included, among other options, severe physical abuse, life threatening injury or murder. There was testimony that another infant son of respondent LaFave had died while in his care as a result of shaken baby syndrome. Although LaFave claimed he was only gently bouncing the infant on his knee at the time, an autopsy revealed the baby had bleeding on both sides of his brain as well as hemorrhaging of the eye. This evidence was sufficient to satisfy the statutory basis for termination.

Both respondents challenge the trial court's finding that termination of their parental rights was in the child's best interests. This Court reviews a best interests determination for clear error. *In re JK, supra* at 209. Here, the evidence established, among other factors, that (1) respondent Perry had a long history of substance abuse and post traumatic stress disorder (PTSD); (2) even with abstinence from substances her prognosis for relapse would be high absent treatment for her PTSD, and (3) she had a history of ongoing interactions with the Department of Human Services relative to her other four children, and she released her rights with respect to these other children. Under these circumstances, we conclude that the trial court did not clearly err in determining that it was in the best interest of the child to terminate her parental rights.

Respondent LaFave asserts that the lapse of time since his other child's death, coupled with his uneventful care of five other children in the interim, established that it was not in Nikki's best interest to terminate his parental rights. However, considering the circumstances of the other child's death, the fact that respondent LaFave apparently failed to fully appreciate his role in the incident, LaFave's hospitalization following an apparent suicide attempt, and other factors, the trial court did not clearly err in the finding that it was in the best interest of Nikki to terminate LaFave's parental rights.

Affirmed.

/s/ Henry William Saad
/s/ William C. Whitbeck
/s/ Brian K. Zahra